

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ARTEMIO MIRANDA MANUEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-20-168-SLP
	)	
RALPH HANSON, et al.,	)	
	)	
Defendants.	)	

**ORDER**

This matter is before the Court pursuant to the Report and Recommendation (R&R) of United States Magistrate Judge Shon T. Erwin entered August 28, 2020 [Doc. No. 19]. On September 28, 2020, the Court entered an Order and Judgment [Doc. Nos. 20-21] adopting the R&R and dismissing this action due to Plaintiff's failure to comply with the Court's orders. Specifically, Plaintiff failed to file proofs of service and failed to respond to the Court's Order to Show Cause [Doc. No. 18].<sup>1</sup>

The Court subsequently vacated the Order and Judgment, *see* Order [Doc. No. 23], and gave Plaintiff an extension of time, or until October 20, 2020 to file an objection to the R&R. Plaintiff has now timely filed his Objection [Doc. No. 24].

In his Objection, Plaintiff states that on May 8, 2020 he submitted summons in this case but acknowledges that he did not submit service copies of the Complaint and Order Requiring Service and Special Report as directed by Judge Erwin. He states he then got transferred to "ICE Detention Center on May 29, 2020" and that due to a lock down, he could not provide the copies. He further states he was deported on August 21, 2020.

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<sup>1</sup> The record reflects that Plaintiff filed a request for issuance of nine summons on May 8, 2020, but he did not submit the required copies of the Complaint or the Order Requiring Service and Special Report.

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The record supports Plaintiff's representations. When Plaintiff filed this action he was in the custody of the Federal Bureau of Prisons and incarcerated at Great Plains Correctional Center in Hinton, Oklahoma. *See* Compl. [Doc. No. 1]. On May 8, Plaintiff submitted a request for issuance of nine summons but did not include the necessary service papers. *See* Pro Se Litigant's Request for Issuance of Summons [Doc. No. 12].

On May 26, 2020, Plaintiff filed a Notice of Change of Address [Doc. No. 13] reflecting his placement in ICE detention. Thereafter, on July 27, 2020, Plaintiff filed a Notice of Change of Address [Doc. No. 17] stating that Plaintiff had been deported to Mexico and requesting that all filings be mailed to his wife's address in Texas.

A few days later, on July 31, 2020, Magistrate Judge Erwin issued an Order to Show Cause [Doc. No. 18]. Specifically, the Order gave Plaintiff until August 17, 2020 "to file proof of service or show good cause why service has not been made." *Id.* at 2. Plaintiff was advised that "[a]bsent a showing of service or good cause, the undersigned will recommend that the Complaint be dismissed against the Defendants without prejudice." *Id.*

Plaintiff did not respond to the show cause order by August 17, 2020. Consequently, Magistrate Judge Erwin entered the R&R presently before the Court. The R&R notes that "Plaintiff has neither filed proof of service nor responded to the Show Cause Order[.]" *Id.* at 2. The R&R recommends dismissal due to "Plaintiff's failure to comply with the Court's Order." *Id.* The R&R provided that any objection was due on or before September 14, 2020. *Id.*

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On September 25, 2020 Plaintiff requested an extension of time to object to the R&R. *See* Pl.'s Mot. [Doc. No. 22]. Plaintiff explained that he sent the summons on time, but "just didn't send enough copies for everyone involved." *Id.* He states he had only just received the R&R and that his "relatives were not able to get the paperwork to [him] on time, because of the pandemic and all the traveling restrictions that are taking place at the border at this time." *Id.* He also assured the Court that he would be "paying the court fee" so that the necessary service copies could be made. *Id.*

Plaintiff has now paid \$216.00 to get copies made. And the Clerk of Court has received Plaintiff's summons and necessary service papers. Under the circumstances, the Court finds Plaintiff's failure to comply with the Court's orders does not warrant dismissal of his action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

IT IS THEREFORE ORDERED that the Court DECLINES TO ADOPT the Report and Recommendation [Doc. No. 19]. The Court re-refers the matter to the Magistrate Judge for further proceedings.

IT IS SO ORDERED this 22<sup>nd</sup> day of October, 2020.

  
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SCOTT L. PALK  
UNITED STATES DISTRICT JUDGE

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